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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 458

DORIS PEREZ, *et al.*,

Petitioners,

vs.

ALICE TRIFILETTI, *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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Opinions Below

The opinion of the Supreme Court of Florida (A. 92-95)* is reported in 74 So. 2d 100. It is reprinted *infra,* pp. 23-26. The Circuit Court of Dade County rendered no opinion; its findings (A. 82) are contained in its Final Decree (A. 82-83, 9-10).

Jurisdiction

The Supreme Court of Florida issued its opinion and what is denominated its "final judgment" on

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* All page references are to the printed Appendix accompanying this Petition for a Writ of Certiorari. Such Appendix is the certified transcript of record in printed form.

August 6, 1954 (A. 92-96). It issued and recorded its Mandate on August 24, 1954 (A. 97-98). Under the rules and practice of the State of Florida, both as evidenced by a certificate of Honorable Guyte P. McCord, Clerk of the Supreme Court of Florida, dated November 12, 1954 and filed herewith, and as long and commonly understood by the bar of the State of Florida, the judgment of the Florida Supreme Court does not become final and take effect as the judgment of said Court until the Mandate issues. *Cf. Union Indemnity Co.* v. *Vetter,* 107 Fla. 761, 762-763 (1932).*

Accordingly the date of the Mandate issued herein, August 24, 1954, measures the time to petition for a writ of certiorari. *Commissioner* v. *Estate of Bedford,* 325 U. S. 283 (1945); *Puget Sound Co.* v. *King County,* 264 U. S. 22 (1924); *Rubber Company* v. *Goodyear,* 6 Wall. 153 (1867).

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3).

Questions Presented

1. May a state court, consistently with the guarantees of the Fourteenth Amendment, issue a blanket injunction permanently banning all picketing, peaceful or otherwise, because of a few trivial and isolated

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* See Rule 26 of the Rules of Practice of the Florida Supreme Court (Florida Statutes Annotated, Vol. 30, Pages 117-118) requiring the Clerk to issue and record the Mandate fifteen days after affirmance or reversal by the Supreme Court, and thereupon to notify the attorneys of record. This is the only provision in the Laws of the State of Florida for effectuating the determination of an appeal, other than the reference to the Court's "opinion" accompanying the Mandate in Florida Statutes Annotated, Vol. 4, § 59.36 and § 59.37.

incidents of minor misconduct at the initial moment of picketing, never repeated in any form during the entire course of peaceful picketing thereafter?

2. Is a state court ousted of jurisdiction to issue an injunction banning picketing where the union's minor misconduct during the picketing is subject to regulation by the National Labor Relations Board as an unfair labor practice under the Labor Management Relations Act, 1947?*

Constitutions and Statutes Involved

The Constitutional and statutory provisions involved herein are set forth in the Supplement, pp. 21-22, *infra*.

Statement

Petitioners, defendants below, are labor organizations of Miami, Florida, and their officers, affiliated with the International Ladies' Garment Workers' Union, A. F. L., together with certain workers who are members of the Union (A. 4, 32, 37). The latter are employed by Cover Girl of Miami, a non-union dress manufacturer (A. 19, 23, 37). The respondents, plaintiffs below, are a group of non-union workers employed by Cover Girl (A. 20, 22, 26).

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* Another possible question, but one which we do not believe is presented on this record (*infra*, pp. 17-19), is whether a state may constitutionally require authorization by a majority vote of the employees as a condition of striking and picketing, especially where as here the matter is subject to regulation by the Labor Management Relations Act, 1947.

On March 12, 1954, plaintiffs filed a bill for injunction against defendants (A. 4-8). The bill alleged that, without authorization by a majority vote of the employees as allegedly required by Section 447.09 of the Statutes of Florida (*infra*, pp. 21-22), defendants were striking and picketing Cover Girl and seeking to induce plaintiffs to join them therein (A. 5-6). The bill further alleged that on March 9 (the first morning of the picketing), a Union officer had struck one employee, Rolle (A. 6).

Simultaneously the court without notice* issued a sweeping temporary injunction banning all striking and picketing of Cover Girl's premises, peaceful or otherwise (A. 9-10).

Defendants filed an Answer (A. 12-16) and a companion Motion to Dismiss and Vacate Temporary Restraining Order (A. 10-11). They denied any violation of the Florida statute; denied that Rolle had been struck; and asserted that in any event this isolated incident could not deprive defendants of their constitutionally protected right to picket peacefully under the First and Fourteenth Amendments to the Federal Constitution (A. 10-13, 16). They further set forth that the picketing was commenced on Tuesday, March 9, in direct response to and in protest against Cover Girl's unfair labor practices, the company having threatened workers with discharge if they remained members of the Union, solicited resignations at the workers' homes on Sunday, March 7, and convened a captive audience of employees during working hours on Monday, March 8, at which it threatened

* The bill did not request an injunction without notice (A. 7).

to close the plant and fire the workers if they continued to adhere to the Union (A. 13-15). The pickets thereupon did "invite, induce, signal or advertise a strike" as a result of "the arbitrary, hostile and unfair tactics of management" (A. 15).

On March 17 a hearing was held (A. 17-81) resulting in a Final Decree on March 18 which made permanent the broadside temporary injunction above described (A. 82-83).

At the March 17 hearing, the only fact as to which there was any dispute was whether Rolle had or had not been struck a blow on March 9, the first morning of the picketing. All the other facts below recited are undisputed. They show the following:

Cover Girl employs between 30 and 35 workers (A. 19). The Union represents 400 workers in the area including 11 workers in this shop (A. 37). The Union held two preliminary conferences with Cover Girl's management on February 27 and Saturday, March 6, looking to a contract for those of the Cover Girl workers who were members of the Union (A. 33-34, 72). The company agreed to meet again on Monday, March 8 (A. 34).

Instead on Sunday the owners visited the workers at their homes and solicited withdrawals from the Union (A. 34, 60-61). On Monday, March 8, they convened a captive audience of the workers in the shop during working hours and made a speech threatening to close the shop rather than deal with the Union (A. 34, 56-59, 61-64).*

* The court considered these events irrelevant (A. 38, 64).

In protest against the company's unfair labor practices, the Union commenced to picket the shop on Tuesday morning at 7:45 A. M. (A. 19-20, 34-36). The picketers, who took turns picketing, included the eleven Cover Girl employees who were members of the Union (A. 20-21, 37-38). The picketing continued from Tuesday, March 9, until it was restrained by the temporary injunction on the afternoon of Friday, March 12 (A. 9-10, 39, 55, 64).

The Rolle episode occurred at the start of the picketing at 7:45 A. M. on Tuesday morning. Taken at its worst, the testimony establishes that as Rolle walked toward the Cover Girl plant, a Union representative approached her, asked her where she worked, offered her a better paying job elsewhere, and when she refused, impatiently struck her on the shoulder and said "God damn it! You can't go down there!" (A. 23-24, 30).* Despite this incident, she did go to work that morning (A. 24, 31), worked every day thereafter, and was never again molested or disturbed in any way (A. 24-25).

Though the bill of complaint referred only to the Rolle incident (A. 6), two other workers testified that at the inception of the picketing on Tuesday morning, a woman or women had held their arm for a moment (A. 28, 29), but that they had told them to take their hands away, and went in to work (A. 28, 31).

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* This version was found by the court (A. 79) and must therefore be accepted, though it was denied by various witnesses (A. 36, 48, 52, 54) and though the court indicated its own uncertainty whom to believe (A. 78, 79). It might also be mentioned that, according to Rolle herself, another Union representative immediately apologized to her for the happening (A. 23-24, 30). The Union representative who struck the blow was promptly arrested and convicted in the City Court (A. 24, 25, 31, 79-80).

These trivial and isolated departures, which occurred only at the start of the picketing on Tuesday morning and never happened again, measure the full extent of all the so-called violence in this case. The undisputed testimony shows that throughout the rest of the day on Tuesday, all day Wednesday, all day Thursday, and until the picketing was enjoined Friday afternoon, the picketing was completely peaceful and without event; no worker was interfered with, bothered, touched, threatened, or molested in any manner whatever; in short there was not the slightest untoward incident of any kind (A. 24-25, 27, 31, 39, 53, 55, 64, 75). Throughout the period, right up to the hearing, every one of the non-union girls continued to work every day as usual (A. 20, 22, 24, 26, 31).

It is on such a record that the trial court determined to issue a permanent injunction banning not only violence but all picketing whatsoever, even peaceful picketing (A. 75). If this Court will examine the trial court's colloquy with counsel (A. 71-81), it will immediately be apparent on what basis and philosophy the court proceeded to deprive the Union and its members of their elementary right peacefully to state their grievances against Cover Girl.

The court declared that it was issuing the sweeping injunction barring all picketing because it believed—though admitting it was somewhat doubtful even of that fact—that the Union representative had "laid his hands" on Rolle (A. 79). It stated it would enjoin all picketing, including peaceful picketing, though the violence in its own words was an "isolated event" and "did not continue;" that it would do so in order to "forestall its recurrence" (A. 75-76). The court

said it would not "tolerate even possible assault and battery" (A. 79) and would not await "bloodshed" (A. 74).

It declared it was "sure" that the pickets "would have all been in jail" had the picketing not been enjoined (A. 75).* The court asserted it was "fine" that no picketing was being carried on because of the preliminary injunction (A. 77). Repeatedly the court expressed its disapproval of "accosting" workers and urging them to work elsewhere at higher wages (A. 72-73, 78, 80), and said in so many words it did "not like the approach of this Union" (A. 79). Although declaring himself to be "a friend of labor" (A. 76), the judge expressed no concern at counsel's protest against the prohibition of "all picketing, all exercise of freedom of speech, all advertising, signalling or inducing a strike by radio, or in newspapers—everything forbidden" (A. 76-77). The court replied it could not see how a union "suffers" by being deprived of these rights (A. 77, 80). Then the court, quite overlooking the fact that management had threatened to fire the workers if they listened favorably to the Union, volunteered its own truly simple solution to the Union's problem: instead of "striking and picketing", the Union could call "a peaceful meeting in an auditorium", at which it could "debate" with "management" (A. 77, see 79, 80).

The next day, March 18, the court entered its final

* Almost in the same breath the court declared it did "not know, and I have no way of knowing, what would have happened had the Court not have intervened" (A. 75).

decree (A. 82-83), making permanent the blanket temporary injunction theretofore issued (A. 9-10).*

On April 15 petitioners filed a motion to vacate the final decree on the ground that the state court lacked jurisdiction to issue it (A. 83-84).** The motion set forth that Cover Girl's sales in interstate commerce exceeded the jurisdictional standards prescribed by the National Labor Relations Board under the Labor Management Relations Act of 1947;*** that the Board

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* In its final decree the court also found that, as had been stipulated (A. 21, 73), no strike vote was taken among the employees and that the strike and picketing were unlawful for this reason too (A. 82). The court, however, made clear that the injunction was actually predicated on violence and if the picketing had been peaceful no injunction would have issued (A. 79, 80). In any event, the Supreme Court of Florida upheld the injunction solely because of the violence (A. 95; *infra*, pp. 10, 17-19). Therefore, as we point out *infra*, pp. 17-19, no question is presented in this case concerning the constitutional propriety of requiring a majority vote as a condition of striking or picketing.

** The issue of lack of jurisdiction may be raised in Florida at any stage of the proceedings. *Bohlinger* v. *Higginbotham*, 70 So. 2d 911, 914 (Fla. 1954); *Florida National Bank* v. *Kassewitz*, 156 Fla. 761, 767 (1946); *Johnson* v. *McKinnon*, 54 Fla. 221 (1907); see *Windsor* v. *McVeigh*, 93 U. S. 274, 282-283 (1876).

*** Petitioners set forth that Cover Girl's total annual sales were $125,000, of which more than half were in interstate commerce (A. 84). At the time in question, the Board's jurisdictional requirement was $25,000 a year in interstate sales. *Seventeenth Annual Report of the National Labor Relations Board*, p. 9 (1953). The requirement has recently been increased to $50,000 a year. *Jonesboro Grain Drying Cooperative*, 110 NLRB No. 67, 37 LRRM 1038 (October 26, 1954). That Cover Girl meets the Board's jurisdictional standards is further established by the appellees' brief in the Florida Supreme Court which included letters from the National Labor Relations Board demonstrating that the Board had in fact taken jurisdiction over unfair labor practice charges lodged by the Union against Cover Girl, though dismissing them for lack of sufficient supporting evidence. In a letter to the Union dated April 22, 1954, the Board's Regional Director stated that in the unfair labor practice case, "the volume of business of this company was sufficient to warrant assertion of jurisdiction under the presently existing standards of the Board."

had exclusive jurisdiction because Congress had pre-empted the subject matter; and that the court was accordingly ousted of jurisdiction to issue the injunction (A. 83-84). Without any responsive pleadings being filed, the court on the same day denied the motion without opinion (A. 85).

Thereafter petitioners appealed to the Supreme Court of Florida both from the final decree and from the order denying the motion to vacate (A. 86-90). On August 6, 1954, that court upheld the decision below (A. 92-96). It concluded that the claim of preemption lacked merit because violence was involved (A. 93-95); that "violence was the predicate of the injunctive order under review" (A. 95); and that the injunction banning even peaceful picketing was warranted because the trial court had properly concluded that "violence did occur, that conditions were threatening and might develop additional breaches of the peace, and that employees were coerced" (A. 95). On August 24, 1954, the Supreme Court of Florida issued and recorded its Mandate accordingly (A. 97-98).

Reasons for Granting the Writ

1. The decision below conflicts with the entire group of picketing decisions of this Court from *Thornhill* v. *Alabama,* 310 U. S. 88 (1940), through *Plumbers Union* v. *Graham,* 345 U. S. 192 (1953). While the later cases recognize that picketing contains elements beyond speech alone and to that extent have limited the broad "free speech" language contained in some of the earlier cases, every decision of this Court to the present day recognizes that there is an

element of communication in picketing which is entitled to protection under the due process clause of the Fourteenth Amendment against unnecessary state encroachment. *Hughes* v. *Superior Court,* 339 U. S. 460, 464-465, 468 (1950); *Teamsters Union* v. *Hanke,* 339 U. S. 470, 477, 479 (1950); *Building Service Union* v. *Gazzam,* 339 U. S. 532, 536-537 (1950); *cf. Plumbers Union* v. *Graham,* 345 U. S. 192, 197-198 (1953).

The broadside injunction in the instant case banning all picketing including peaceful picketing deprives petitioners, without warrant, of their constitutional right to communicate freely. They are prohibited from picketing peacefully in protest against their employer's threats to close the plant and to fire the workers if they exercise their right to join the Union. They are permanently forbidden to inform the public and other workers, through peaceful means, of the facts of the labor dispute in which they are engaged.

Drivers Union v. *Meadowmoor Co.,* 312 U. S. 287 (1941), makes plain that the broad injunction cannot be rested on violence as the courts below sought to do. The misconduct here was trivial, a single impatient blow struck at one worker. It occurred at the beginning of the picketing and was never repeated in any form. There was never any other untoward incident of any kind thereafter and the picketing was entirely peaceful. The trial court itself agreed that the violence was an "isolated event" and "did not continue" (*supra,* p. 7). That being so, *Meadowmoor* as well as later cases make clear that the constitutional right to picket peacefully cannot be withdrawn—that in such circumstances there is no competing state

interest to be served by cancelling the right to communicate in a peaceable manner. The "right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exuberance the conclusion that otherwise peaceful picketing has the taint of force." The *Meadowmoor* case, at 293, also 295, 296; *Cafeteria Union* v. *Angelos,* 320 U. S. 293, 296 (1943); the *Gazzam* case, at 296.

The state supreme court did state that "conditions were threatening and might develop additional breaches of the peace" (*supra,* p. 10). We recognize that the views and judgments of the state courts are entitled to respect (*Meadowmoor,* at 294; *Hanke,* at 474-475), but this Court has declared it has the ultimate burden, where basic constitutional rights are concerned, to examine the evidentiary basis of state court rulings. *Meadowmoor,* at 293; *Plumbers Union* v. *Graham,* 345 U. S. 192, 197-198 (1953); *Niemotko* v. *Maryland,* 340 U. S. 268, 271 (1951); *Feiner* v. *New York,* 340 U. S. 315, 316 (1951); *Craig* v. *Harney,* 331 U. S. 367, 373-374 (1947). And the Court has also announced it will not permit the right of peaceful picketing to be erased through "spurious" or "insubstantial findings of fact screening reality". *Meadowmoor,* at 293, 299; *cf. Chambers* v. *Florida,* 309 U. S. 227, 228-229 (1940). That is exactly the situation here.

The instant case warrants review by this Court. It has an importance beyond the few workers here involved. Starting in the second half of the 1940's, state courts have been issuing injunctions in picketing cases with greater and greater frequency . *State Court Injunctions* (Report of the Senate Subcommittee on Labor-Management Relations (81st Cong., 2d Sess.,

Sen. Doc. 7), p. 5 (1951)). And these injunctions, not infrequently, have banned all picketing, peaceful or otherwise, because some violence had occurred. As was recently said in *State Labor Injunctions and Federal Law* (Staff Report to the Subcommittee on Labor and Labor-Management Relations, 82nd Cong., 2d Sess.), p. 33 (1953):

> "The further evil of injunctions purportedly based upon violence and like conduct is the impairment of other federally protected activity, *i. e.*, a strike in protest of an employer unfair labor practice."
>
> "Under the guise of an alleged evil, canny or unscrupulous employers can defeat lawful union activities and do it with the aid of State courts, however unwitting."

Society has a valid interest in protecting against misconduct on the picket line. States of course may use their injunctive power to insure against repetition of violence, at least where Congress has not preempted that function for the federal government (see *infra*, pp. 15-17). But as this Court has repeatedly stated, the evil to be remedied measures the scope of the injunction to be granted—the injunction must not ban the Constitutional right of peaceful communication through peaceable picketing where a lesser remedy will suffice. *Meadowmoor*, at 296, 298; *Angelos*, at 295; *Hughes*, at 462; *Hanke*, at 480-481; *Gazzam*, at 533, 536, 539-540, 541; *cf. Thornhill*, at 105; *Thomas* v. *Collins*, 323 U. S. 516, 547 (concurring opinion).

The trial court, however, banned even peaceful picketing because, in its view, all picketing carries the potential of "bloodshed" (*supra*, p. 8). Its atti-

tude is reminiscent of what one thought was a bygone age. See the oft-quoted statement in *Atchison etc. Railway Co.* v. *Gee,* 139 Fed. 582, 584 (C. C. S. D. Iowa, 1905); *Moore* v. *Cooks' etc. Union,* 39 Cal. App. 538, 541 (1919). Certainly that attitude cannot be reconciled with the decisions of this Court on peaceful picketing.

If the decision below is permitted to stand, the constitutional protections of workingmen are fragile things indeed. A minor incident of violence,* involving a single blow at a single person, results in permanently depriving a multitude of other completely innocent workers of their right to state their grievances. When we remember, if we examine our industrial history, that picket line violence has not infrequently been provoked by agents of the employer (*Encyclopaedia of the Social Sciences,* Vol. V, pp. 108-110, Macmillan, 1937), the jerry-built nature of the employees' constitutional rights, if the decision below is correct, is evident.

The importance of the issue is increased by the recent action of the National Labor Relations Board in raising its jurisdictional standards (*supra,* p. 9, footnote, and companion cases). This throws into the jurisdiction of the state courts many more cases formerly within federal competence. It makes it the more urgent that the powers, and the limitations on the powers, of state courts to issue injunctions be spelled out by this Court.

Not since the *Meadowmoor* case, nearly fourteen years ago, has this Court reviewed a case where vio-

* Which Florida redressed by an arrest and conviction in the City Court (*supra,* p. 6).

lence was the predicate of an injunction banning all peaceful picketing. There the violence was flagrant, extensive, and long-continued. Here it is trivial, isolated, and never-repeated. Whether the due process clause of the Constitution protects the right of continued peaceful picketing in such a situation is of general public importance, warranting review.

2. If this Court overturns the injunction on due process grounds, it need not necessarily reach the second question presented. That question, however, is important in its own right, namely, whether the Labor Management Relations Act of 1947 has so preempted the field as to bar a state court from issuing a preventive order operating *in futuro* against improper, or as in this case all, picketing.*

The decision below would seem to be in conflict with *Garner* v. *Teamsters Union,* 346 U. S. 485 (1953), and *United Workers* v. *Laburnum Corp.,* 347 U. S. 656 (1954). It is the teaching of those cases that a state court cannot issue an injunction, operating prospectively,** against union misconduct which constitutes an unfair labor practice under the National Act (346 U. S., at 487, 498-499; 347 U. S., at 663, 665, 666-667). The exclusive authority to award preventive relief in such situations lies in the National Labor Relations Board which has authority also, where necessary, to obtain a temporary injunction from the federal district courts (Section 10 (j) of the National Act; the *Garner* case, at 499).

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* Conversely, should the Court decide the second question in favor of preemption, it need not necessarily reach the first question.

** As distinguished from a money award in a tort action for past damage done. The *Laburnum* case, *supra.*

There is no doubt that the picket line violence ascribed to the Union in the instant case would, if true, constitute an unfair labor practice under the Taft-Hartley Act. Section 8(b)(1)(A); *Fifteenth Annual Report of the National Labor Relations Board,* p. 127 (1950); *cf.* the *Laburnum* case, at 660-663. If, therefore, a charge had been lodged with the Board against the Union, as it could have been, the Board would have taken jurisdiction of the controversy (*supra,* p. 9, footnote); obtained a temporary federal court injunction if it considered that course necessary; and thereafter issued such prohibitory order as the circumstances required. In that way, the misconduct forbidden by the Act would have been prevented by the processes prescribed in the Act, not by the conflicting procedures of state courts which are "excluded * * * from enjoining future unfair labor practices and thus colliding with the Board" (the *Laburnum* case, at 663).

Had the procedures contemplated by Congress actually been followed, it is safe to say that the Board's order, unlike the decree in this case, would have forbidden repetition of the misconduct without needlessly trespassing, as the state court did, on the workers' constitutional and statutory rights (Sections 7 and 13 of the Act) to engage in peaceful picketing. *Cf. Labor Board* v. *Express Publishing Co.,* 312 U. S. 426, 436-437 (1941); *May Stores Co.* v. *Labor Board,* 326 U. S. 376, 388-393 (1945); *Labor Board* v. *Crompton Mills,* 337 U. S. 217, 226 (1949). As the late Mr. Justice Jackson pointed out for the unanimous Court in *Garner,* it is the policy of the Federal Act not to "condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions.

Otherwise, it is implicit in the Act that the public interest is served by freedom of labor to use the weapon of picketing" (346 U. S., at 499-500). But this policy can be defeated and the guaranteed rights forfeited, as the instant case makes dramatically clear, if state courts with their various "local * * * attitudes toward labor controversies" (*Garner,* at 490; compare the trial court's attitude, *supra,* pp. 7-8) are permitted to intrude.

The court below interpreted *Garner* and *Laburnum* otherwise—as permitting a state court to enjoin future conduct constituting an unfair labor practice where violence is involved (A. 93-95). Some other state courts have ruled likewise, *e. g. Douglas Public Service Corp.* v. *Gaspard,* 34 LRRM 2592 (La. Supreme Ct., 1954). Whether state courts do or do not have jurisdiction in such situations is obviously of general importance and should be resolved by this Court.

3. As we have said (*supra,* p. 2), we do not believe this case presents the question whether Florida, consistently with the Federal Constitution, can require a majority vote of employees pursuant to Section 447.09(3) of the Florida Statutes (*infra,* pp. 21-22) as a condition of striking or picketing.

In three well-known "laundry" cases, never overruled, the Supreme Court of Florida has interpreted Section 447.09(3) as having no application to a situation such as that involved in the instant case, and has accordingly deemed it unnecessary to pass on the constitutionality of that provision. *Whitehead* v. *Miami Laundry Co.,* 160 Fla. 667 (1948); *Moore* v. *City Dry Cleaners and Laundry,* 41 So. 2d 865 (Fla. 1949); *Johnson* v. *White Swan Laundry,* 41

So. 2d 874 (Fla. 1949). It is inconceivable that the same court intended to overrule these repeated decisions on so important a subject *sub silentio,* and to uphold without a word of discussion the constitutionality of a statute on which it had so carefully reserved decision previously.*

The court left no doubt on what it was actually ruling. It did not rest its affirmance at all on the statutory provision in question. Instead the court declared in so many words that violence was "the predicate" of the injunctive order under review (A. 95). It is thus plain that the constitutionality of the statutory provision was not passed on. *Cf. Hotel Employees' Local* v. *Board,* 315 U. S. 437, 438, 440-441 (1942); *Teamsters Union* v. *Hanke,* 339 U. S. 470, 480 (1950).**

It follows, as we see it, that the constitutionality of Section 447.09(3) is not here involved. But if the decision below can be interpreted otherwise, that is only the more reason for granting the writ. For in that event, the decision is in probable conflict with *Automobile Workers* v. *O'Brien,* 339 U. S. 454 (1950). There a comparable statute was held unconstitutional under the commerce power when it was applied—as it is here—to an interstate business.

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* In their appeal, petitioners challenged the applicability and constitutionality of the statute (A. 87) and briefed the subject at length (Appellants' Brief in the Florida Supreme Court, pp. 5-9, 21-52).

** If more were needed, the Rules of Practice of the Florida Supreme Court, Rule 1(b) (Florida Statutes Annotated, Vol. 30, Page 5), require that the constitutionality of a statute be adjudicated only by the Supreme Court *en banc* (compare the three "laundry" cases, *supra*), whereas the instant injunction was upheld by one of the divisions of the court.

Moreover, even when applied to an intrastate business, an important constitutional question is presented warranting resolution by this Court. Similar statutes have been held unconstitutional under the due process clause by the highest courts of a number of states. *AFL* v. *Bain,* 165 Ore. 183 (1940); *Alabama State Federation of Labor* v. *McAdory,* 246 Ala. 1 (1944), cert. dismissed 325 U. S. 450 (1945); *AFL* v. *Reilly,* 113 Colo. 90 (1945); also *Stapleton* v. *Mitchell,* 60 F. Supp. 51 (D. C. Kans. 1945), dismissed sub nom. *McElroy* v. *Mitchell,* 326 U. S. 690 (1945). In the *O'Brien* case, this Court reserved decision on the due process point (339 U. S., at 456). See also *Hotel Employees' Local* v. *Board,* 315 U. S. 437, 440, 442 (1942). The question is of obvious importance and one which should be settled by this Court.

CONCLUSION

For the foregoing reasons, petitioners request that this petition for a writ of certiorari be granted.

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SUPPLEMENT

Constitution and Statutes Involved

United States Constitution

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

State Statute

Florida Statutes Annotated—Volume 15

Tit. 29, Ch. 477 (Laws 1943, c. 21968, § 9)

§ 447.09. Right of franchise preserved; penalties

It shall be unlawful for any person:

* * * *

(3) To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in sub-section (3) of this section without a secret ballot.

* * * *

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in § 447.03, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

Opinion of Supreme Court

[108] And thereafter, to-wit: On the 6th day of August, 1954, the Supreme Court of Florida after having heard argument of counsel for the respective parties upon the said case, did render and file its opinion thereon, which Opinion is in words and figures as follows, to-wit:

[109] IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1954

SPECIAL DIVISION A.

Case No. 25,198

DORIS PEREZ, et al.,
Appellants,

-vs-

ALICE TRIPILETTI, et al.,
Appellees.

Opinion filed August 6, 1954

An Appeal from the Circuit Court for Dade County, Pat Cannon, Judge

GRAMLING & GRAMLING, for Appellants

JEPTHA P. MARCHANT and JOSEPH A. PERKINS, for Appellees

TERRELL, *J.*

Appellees, a majority of the employees of Cover Girl, Inc., secured a final decree of injunction against appellants as defendants, enjoining them and their Union from participating in a strike against the employer, a Miami manufacturer of women's wearing apparel, from intimidating

or coercing plaintiffs to participate in said strike, and from picketing their employer's place of business. A motion to vacate the final decree and to join the employer as third party defendant was denied, thereupon this appeal was prosecuted.

Appellants urge three questions as grounds for reversal. Questions one and two turn on evidentiary matters that the trial court settled and we find no reason to overthrow his judgment or to comment further as to these. We treat the third question which is grounded on the contention that state courts are without jurisdiction to entertain and adjudicate controversies involving labor relations.

[110] The basis of this contention is that the Federal Government has preempted the field of labor relations where interstate commerce is involved and being so jurisdiction of labor disputes is vested in the National Labor Relations Board whose jurisdiction is exclusive. There is no showing whatever that Cover Girl, Inc. is engaged in interstate commerce, but if the record made such a showing the state court might not enjoin *peaceful* picketing if it involved an unfair labor practice under the Taft-Hartley Act. *Garner* v. *Teamsters, Chauffeurs & Helpers Local Union No. 776 (AFL)*, 346 U. S. 485, 74 S. Ct. 161, but see *United Const. Workers, Affiliated with United Mine Workers of America* v. *Laburnum Const. Corp.*, 74 S. Ct. 833.

In the *Laburnum* case the Court permitted the employer to recover damages from the defendant union *in a state court* (Virginia) for unfair labor practices amounting to a common law tort. The opinion does not mention the unfair labor practices involved (see footnote 4 of the opinion) as such, but the Supreme Court assumed that the union's conduct was an unfair labor practice under Section 8(b) (1) of Taft-Hartley Act, the pertinent part being: "Sec. 8(b). It shall be an unfair labor practice

for a labor organization or its agents—(1) to restrain or coerce (a) employees in the exercise of the rights guaranteed in Section 7." (Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . .")

The Court distinguished the case from *Garner* v. *Teamsters Union, supra,* in its holding that state courts are unable to enjoin unfair labor practices through "preventive procedures" that conflict with federal law to the same end because Taft-Hartley has occupied the field to the exclusion of the states. As to damages arising from unfair labor practices, said the Court, Congress had [111] prescribed no procedure for dealing with the *consequences of tortious conduct already committed,* there was no ground for concluding that existing (state or federal) criminal penalties or civil liability had been eliminated. From a reading of the last part of the opinion it is manifest that the Court undertook to clarify the *Garner* case and to allay some of the fears it created. See the criticism of Mr. Rose cited in 40 Va. L. Rev. 177.

The cleavage in jurisdictions of state and federal courts as well as administrative agencies was further pointed out in the *Garner* case by calling attention to *Allen-Bradley Local No. 1111, United Electrical Radio and Machine Workers of America* v. *Wisconsin Employment Relations Board,* 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154. *"We have held that the state still may exercise its historic powers over such traditionally local matters as public safety and order and the use of streets and highways."* (Emphasis added.) The Court then went on to point out that nothing indicated that the activity enjoined in the *Garner* case constituted or threatened a probable

breach of peace or would call for extraordinary police measures on the part of state or city authorities.

From what has been said, it seems settled that while states are precluded from applying their "preventive" labor law in controversies affecting interstate commerce, their power to preserve the peace remains intact even though it be invoked in connection with a labor dispute. Ratner, Problems of Federal-State Jurisdiction in Labor Relations, 3 Labor L. J. 750, 761-62 (1952), 7 Vanderbilt L. Rev. 422, 424 (1954). See also *International Union UAW, AFL* v. *Wisconsin Emp. Rel. Bd.*, 336 U. S. 245, 254, 69 Sup. Ct. 516, 93 L. Ed. 651 (1949) commonly referred to as the "Briggs-Stratton case" (cited in the *Garner* case) wherein certain types of unduly coercive conduct (of nebulous bounds) falling short of actual or threatened violence (intermittent and unannounced stoppages) was subject to state regulation.

Appellants overlook the fact that violence was the predicate for the injunctive order under review. There was testimony of violence in the record, that violence did occur, that conditions [112] were threatening and might develop additional breaches of the peace, and that employees were coerced. Appellants say that all these were "minor" but the trouble with that contention is that we are required to follow the trial court rather than counsel for appellants when there is support for the court's order.

The decree appealed from is affirmed.

ROBERTS, *C. J.*, THOMAS and MATHEWS, *J. J.*, Concur

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 438

[redacted] et al.,

Petitioners,

vs.

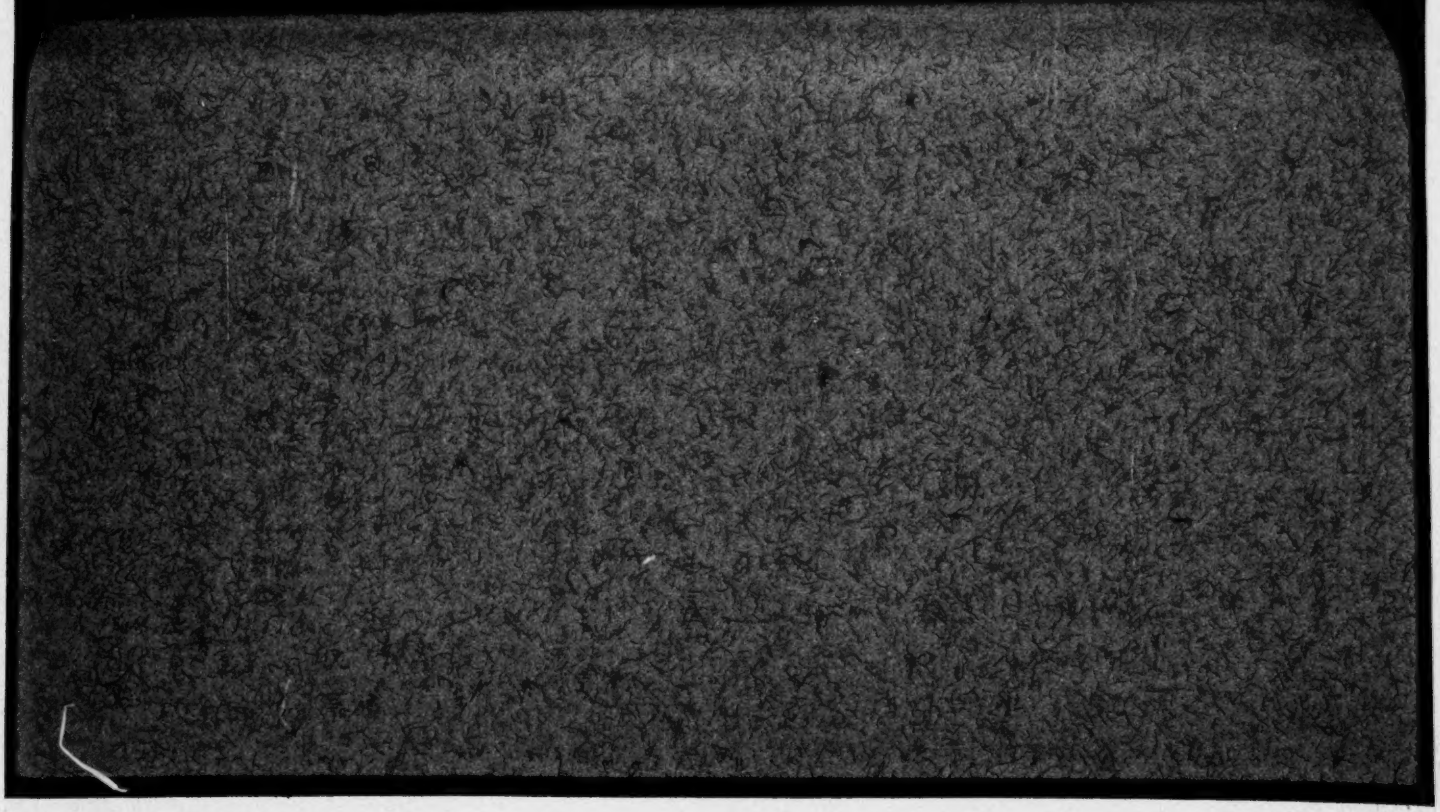
[redacted] et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENTS' BRIEF

[redacted]
[redacted]
1107 [redacted]
[redacted]
Attorneys for Respondents



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1954

No. 458

DORIS PEREZ, *et al*,

Petitioners,

vs.

ALICE TRIFILETTI, *et al*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR RESPONDENTS

STATEMENT

Since Counsel for Respondents cannot agree in toto with the statement of facts, as set forth in the Brief of Petitioners, a restatement rather than an attempt to correct and reconcile is in order.

This is not a suit by an employer to enjoin and restrain a Union or its members from engaging in the alleged unlawful picketing of the employer's premises.

It is a suit for injunction instituted by a majority of the employees of a firm known as Cover Girl of Miami, Florida, against certain other employees of such firm and Local #339 and #415, International Ladies Garment Workers' Union A. F. of L. (A. 4-8). Specifically it is a suit by twenty-two employees of said firm against eleven employees of said firm and the Union to restrain the minority from interfering with the right of the majority to pursue their work unmolested and without interference.

The thirty-three employees involved all worked for Cover Girl of Miami until the morning of March 9, 1954 (A. 8, 19, 22), on which date eleven of said employees went out on strike and started picketing the premises of Cover Girl in consort with the defendant Union and certain of its members, agents and employees. (A. 19-22, 37-38).

The Respondents-Plaintiffs refused to join in the strike and remained on the job and on March 12, 1954 the plaintiffs filed their Complaint against Petitioners-Defendants to enjoin them from picketing Plaintiffs' place of work and restraining said Defendants from interfering with the Plaintiffs.

The Complaint charged the Defendants with a violation of the Constitution and Laws of the State of Florida and specifically Chapter 447.09 of the Statutes of the State of Florida. The Complaint also charged that the picketing was accompanied with violence (A. 5-6).

Temporary injunction was granted upon the filing of the Complaint (A. 9-10).

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*The Complaint was signed by each of the Respondents-Plaintiffs (A. 8.)

On March 17, 1954 Defendants moved to vacate the temporary injunction (A. 10-11) and on the same date filed their Answer to the Complaint (A. 12-16). The Answer, in effect, denied all of the material allegations of the Complaint, except the fact that the Plaintiffs constituted a majority of the employees of Cover Girl, and in addition charged Cover Girl (not the Plaintiffs) with a violation of Section 443.03 of the Laws of the State of Florida (A. 13). *(Section 443.03 of the Florida Statutes deals with Unemployment Compensation; thus is an apparent error and Petitioners no doubt mean to refer to Section 447.03).

The cause came on for hearing on March 17, 1954 on the Motion of the Defendants to Vacate the Temporary Injunction. At the conclusion of said hearing at 7:00 P.M., on said date, both sides having announced that their cases had been completed and upon the suggestion of Counsel for Defendants, it was agreed that a final decree would be entered in the case (A. 80-81). Whereupon the Court on the 18th day of March, entered its Final Decree making the injunction against the Defendants permanent.**

On April 15, 1954, twenty-eight days after the entry of the Final Decree in this cause, the Defendants filed, in the Circuit Court of Dade County, Florida, the Court of original jurisdiction, and the Court which had entered the Final Judgment on March 18, 1954, a pleading entitled "Motion to Vacate Final Decree and Join Additional Party Defendant" (A. 83-84). This Motion alleged, in effect, that Cover Girl of Miami, the plaintiffs' employer, was engaged in Interstate Commerce within the meaning and

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*No suggestion of lack of jurisdiction on the part of the Court was made.

**Yet no suggestion of lack of jurisdiction.

intent of the Labor Management Relations (Taft-Hartley) Act of 1947 as Amended; that, by said Act, the Congress of the United States had preempted the field of labor activities and had thereby relieved the several states of jurisdiction to enjoin labor activities; that Defendants had lodged charges against Cover Girl with the National Labor Relations Board, which said agency had exclusive jurisdiction of this controversy.* The Motion also sets forth certain figures which the movants alleged they had taken from a report of Dun & Bradstreet in support of the allegation that Cover Girl was engaged in Interstate Commerce and subject to the jurisdiction of the National Labor Relations Board (A. 84). The Motion to Vacate contained a request that the court permit the joining of Cover Girl of Miami as an additional or third party defendant in the cause (A. 83).

On April 15, 1954, the trial Court denied the Defendants' Motion to Vacate the Final Decree and Join Additional Party Defendant (A. 85).

On April 15, 1954 Defendants filed their Notice of Appeal to the Supreme Court of Florida (A. 86). The appeal was duly perfected and after argument of Counsel for the respective parties the Supreme Court of Florida, on the 6th day of August, filed its Opinion and Final Judgment wherein and whereby the judgment of the trial court was affirmed (A. 92-96).

QUESTIONS INVOLVED

1. May a state court, consistently with the guarantees of the Fourteenth Amendment, issue a blanket in-

*This is the first time any question suggesting lack of jurisdiction on the part of the trial court had been raised.

junction permanently banning all picketing, peaceful or otherwise, because of a few trivial and isolated incidents of misconduct at the initial moment of picketing, never repeated in form during the entire course of peaceful picketing thereafter?

2. Is a state court ousted of jurisdiction to issue an injunction banning picketing where the Union's minor misconduct during the picketing is subject to regulation by the National Labor Relations Board under the Labor-Management Relations Act, 1947?

The foregoing questions, posed by Petitioners, are not applicable to the facts in this case, and, therefore, tend to prejudice the position of the Respondents.

As viewed by Counsel for Respondents, the facts, together with the Statutes involved, pose the following questions tc be considered.

1. May a State Court enjoin picketing where the same is in violation of the laws of such state or is carried on to further an unlawful purpose?

2. May the Defendants in a suit, in a state court, to enjoin unlawful picketing, after appearance, plea, hearing on merits and entry of a final decree against them, raise for the first time question suggesting lack of jurisdiction of state court on grounds that National Labor Relations Board had exclusive jurisdiction of the subject matter of the suit?

ARGUMENT

As to Question No. 1, touching upon the right of State Courts to enjoin illegal and unlawful picketing, we present the following:

Petitioners admit (A. 21) to the violation of sub-sections (3) and (4) of Section 447.09 Florida Statutes Annotated which makes it unlawful for any person to participate in any strike, walkout or cessation of work without such action being authorized by secret ballot by a majority of the employees to be governed by such action.

Petitioners seek to avoid the effect of the provisions of Section 447.09 Florida Statutes Annotated by contending, first, that the injunction in this case was not granted because of any violation of Sub-sections (3) and (4) of Section 447.09, Florida Statutes Annotated, but rather that the court granted the injunction because of the violence attending the picketing, and, second, on the ground that Sub-sections (3) and (4) of Section 447.09 Florida Statutes Annotated is unconstitutional in that said Sections are repugnant to the First and Fourteenth Amendments to the Constitution of the United States.

There can be no question whatever that the injunction in this case was issued by the Florida Court based upon a violation, by the Petitioners, of Sub-sections (3) and (4) of Section 447.09 Florida Statutes Annotated, in addition to a violation of the laws of the State of Florida which prohibit violence.

The final decree of the Circuit Court for Dade County, Florida entered in this cause makes the following findings:

"1. That the equities of this cause are with the Plaintiffs and against the Defendants.

"2. That the Defendants, and each of them, are engaged in a strike without the same being authorized by a majority vote of the employees governed thereby in violation of F.S.A. 447.09.

"3. That the picketing in connection with this unlawful strike was, accordingly, for an unlawful purpose and accompanied by violence."
(A. 82).

Petitioners contend that because the Supreme Court of Florida in its Judgment of affirmance failed to comment at any length upon the constitutionality of Section 447.09 Florida Statutes Annotated that it thereby, in effect, declared said Section 447.09 unconstitutional.

A casual perusal of the judgment of the Supreme Court of Florida (A. 23-26) will reveal the falacy of Petitioners' contention. The Supreme Court of Florida in an opinion by Mr. Justice Terrell, concurred in by the other Justices, shows conclusively that all questions raised by the Petitioners in the Supreme Court of Florida were recognized and passed upon by the court including the suggestion of a lack of jurisdiction in the State Courts to issue injunctions against persons engaged in interstate commerce.

The Supreme Court of Florida covered this situation thoroughly in its Opinion, after observing that there was no showing whatever that the employer (who was not a party to the suit) was engaged in interstate commerce,

within intent of the Taft-Hartley Act, by pointing out that even though should it be shown the employer was engaged in interstate commerce that the State Courts would still have jurisdiction in those cases where violence was involved, and in support of its position cited *Allen-Bradley Local No. 1111, United Electrical Radio and Machine Workers of America* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154, which case was referred to and approved in *Garner* v. *Teamsters, Chauffeurs & Helpers Local Union No. 776* (AFL), 346 U. S. 485, 74 S. Ct. 161 (P. Supp. 24-26).

So it may be readily observed that the Supreme Court of Florida merely pointed out in its judgment that even had the Plaintiffs' employer engaged in interstate commerce, within the intent of the Taft-Hartley Act, this fact would be of no avail to the Defendants, Petitioners here, in the instant case, because of the acts of violence committed by them.

The Petitioners contend that since the Supreme Court of Florida did not deem it necessary to pass upon the constitutionality of Section 447.09 Florida Statutes Annotated in the so-called "Laundry" cases, *Whitehead* v. *Miami Laundry*, 160 Fla. 667; *Moore* v. *City Dry Cleaners and Laundry*, 41 So. 2d 865; *Johnson* v. *White Swan Laundry*, 41 So. 2d 874, that the statute is, therefore, unconstitutional. This reasoning on the part of Petitioners is incongruous. On the contrary, this law is yet on the Statute Books of the State of Florida and has never been declared to be unconstitutional by the Supreme Court of Florida. All Statutes in the State of Florida are presumed to be constitutional until they have been declared to be otherwise by the Supreme Court of that State. When we realize, as

admitted by the Petitioners, that the statute in question has been before the Supreme Court of Florida on at least three (3) different occasions and never declared by said Court to be unconstitutional, it becomes reasonable to assume the Supreme Court of Florida recognized the legality of the Statute and placed its stamp of approval thereon.

In further answer to the Petitioners' contention that the Supreme Court of Florida did not consider the statute under attack in the instant case, we respectfully call to the attention of this Court the fact that Petitioners, in their first two Assignments of Error (A. 87) specifically assigned, as error, the application, by the trial court, of the provisions of Sub-sections (3) and (4) of Chapter 447.09 Florida Statutes Annotated to the facts of the case.

In this connection we further call to the attention of this Court the fact that in the Opinion and Judgment of the Supreme Court of Florida (P. 24) it made the following statement:

> "Appellants urge three questions as grounds for reversal. QUESTIONS ONE AND TWO TURN ON EVIDENTIARY MATTERS THAT THE TRIAL COURT SETTLED AND WE FIND NO REASON TO OVERTHROW HIS JUDGMENT OR TO COMMENT FURTHER AS TO THESE. We treat the third question which is grounded on the contention that state courts are without jurisdiction to entertain and adjudicate controversies involving labor relations." (Capitalization ours).

Question one and two referred to by the Supreme Court of Florida are the questions raised by Petitioners-Defend-

ants on the question of the constitutionality of the Statute under attack.

It is further contended by Petitioners that the facts in the instant case are the same as those facts in the "Laundry" cases, in-so-far as the applicability of Sub-section (3) of Section 447.09 Florida Statutes Annotated is concerned, but such is not the case because in all of the so-called "Laundry" cases the Court found none of the employees of the laundries involved were engaged in the strike or the picketing attendant thereto. In this case the record shows conclusively that eleven of the employees of Cover Girl of Miami were engaged in a strike and picketing within the purview of Sub-section (3), Section 447.09 Florida Statutes Annotated (A. 37-38). Far from the facts in the so-called "laundry" cases where the court found that the Defendants were merely announcing a strike to the public, the Defendants-employees in this case were without any question participating in a strike, walk-out and cessation of work in violation of the Laws of Florida.

At this time we think it would be helpful to call to the Court's attention Section 447.01 of the Florida Statutes Annotated, which sets forth the public policy of the State of Florida, and reads as follows:

"447.01 Regulating labor unions; state policy

"(1) Because of the activities of labor unions affecting the economic conditions of the country and the state, entering as they do into practically every business and industrial enterprise, it is the sense of the legislature that such organizations affect the public

interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

(2) It is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives, in the manner, and to the extent hereafter set forth. Laws 1943, c. 21968, Sec. 1.",

and to the "Right to Work Amendment" adopted by the people of the State of Florida in 1944, Declaration of Rights to the Constitution of the State of Florida, Section 12, wherein it is provided:

"The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and throught a labor organization or labor union to bargain collectively with their employer."

And Section 447.03 Florida Statutes Annotated which reads as follows:

"447.03 Employees' right of self-organization

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. Laws 1943, c. 21968, § 3."

Petitioners have completely ignored their violations of Sub-section (11) of Chapter 447.09, which reads as follows:

> "(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in § 447.03, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family."

Petitioners-Defendants charge a violation of their rights as set forth in Section 447.03 Florida Statutes Annotated, and in as much as said Section 447.03 is referred to in Sub-section (11) of Section 447.09 we deem it pertinent to call to the attention of this Court the fact that the Supreme Court of Florida in construing Section 447.03 Florida Statutes Annotated had the following to say:

> "The public policy of Florida requires that all workers, whether union or nonunion, be considered on an equal footing with respect to labor opportunities guarantees complete freedom of decision in whether to join or refrain from joining any labor organization and prohibits coercion or intimidation with respect to such choice or any denial or abridgement of the right of obtaining or retaining employment on account of membership or nonmembership in any labor organization. Local Union No. 519 of United Ass'n of Journeymen and Apprentices of Plumbing and Pipefitting Industry of U. S. and Canada v. Robertson, 44 So. 2d 899."

Petitioners contend that the purpose of the strike and the picketing was to announce to the general public a labor dispute between themselves and their employer, but the

record in this case shows conclusively such was not the case, but on the contrary that the real purpose and intent in picketing was three fold, to-wit:

1. To coerce and intimidate the Respondents-Plaintiffs to join them in their activities in violation of Sub-section (3) of Section 447.09 F. S. A.

2. To coerce, intimidate, threaten and annoy the Plaintiffs to the end that they would be prevented from freely and properly carrying on their work and thus cause them to join the Union, designate it as their business agent, or quit their jobs in disgust.

3. To coerce and intimidate the employer to such an extent that it would force the Respondents-Plaintiffs to join the Union.

Respondents' contention in this respect is amply borne out by the testimony of Mae Pearl Rolle, who testified at length concerning the assault which was made upon her on the day the strike began, by the witness, Samuel Macy, Secretary-Treasurer and spokesman for the Defendant-Union. Her testimony includes, among other things, the following.

"He said, 'Are you going to work for a dress company that is not in the union?' I said, 'This is a free country. I would like to think about it.' Then this lady they held on their shoulders, he began to talk to her; and as he talked to her I walked away; and Mr. Macy pulled me and struck me on my shoulder and said, 'God damn it! You can't go down there! And I jumped in the (27) gutter and said, 'I'm going home!' He said, 'Go home but you can't go down there!' "
(A. 23)

And the testimony of Lessie Mae Phillips, who testified:

> "They grabbed me by each arm and said, 'You can't go down there!' And I said, 'I am going to work.' And they said, 'You can't go down there!' "

The Supreme Court of Florida in the case of *Miami Typographical Union No. 430, et al* v. *Ormerod, et al*, 61 So. 2d 753, (1952) settled the Law of Florida on this question when it held that:

> "(4) When picketing is carried on to further an unlawful purpose, as was correctly determined in this case, it loses its characteristic of free speech which is guaranteed by the First Amendment to the Federal Constitution. It becomes, as was stated by Professor Gregory in his work on Labor and the Law, cited with approval by the U. S. Supreme Court in the case of Hughes v. Superior Court of State of Calif., 1950, 339 U. S. 460, 464, 465, 70 S. Ct. 718, 94 L. Ed. 985, 'simply a species of coercion traveling under the guise of speech for the purpose of enjoying constitutional immunity * * *.' In the case of International Brotherhood of Teamsters v. Hanke, 1950, 339 U. S. 470, 474, 70 S. Ct. 773, 775, 94 L.Ed. 995, 13 A.L.R. 2d 631, rehearing denied 339 U. S. 991, 70 S. Ct. 1018, 94 L.Ed. 1391, Mr. Justice Frankfurter said, and we quote with approval, 'We must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionaly protected freedom of speech.' In this case it is clear that the protection accorded free speech was forfeited by appellants."

So far as we have been able to determine the so-called "Right-to-Work" Amendments, which have been adopted in the states, have been held not to be repugnant to Articles One and Fourteen of the Constitution of the United States.

It is also true that this Court has upheld statutes, in force and effect, in other states and similar to the Florida Statutes which set forth the public policy of those states on labor matters. In *Hotel and Restaurant Employees' International Alliance, Local No. 122, et al.* v. *Wisconsin Employment Relations Board, et al., No. 124*, 315 U. S. 437 (1942), this Court upheld the constitutionality of a statute similar to that, in force and effect, in the State of Florida. In upholding Sec. 111.06 the Court, speaking through Mr. Justice Frankfurter, said:

> "The Wisconsin statute underlying this controversy was enacted as a comprehensive code governing the relations between employers and employees in the state. Only a few of its many provisions are relevant here. Section 111.06 provides that it shall be 'an unfair labor practice' to 'co-operate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike,' and to 'hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or

> conveyance.' The Act contains a provision expressly dealing with its construction: 'Except as specifically provided in this chapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of indivuals to work; nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech.' "Sec. 111.15."

And to the same import is *Building Service Union* v. *Gazzam*, 339 U. S. 532 (1950) where the Court speaking through Mr. Justice Linton said:

> "The State of Washington has by legislative enactment declared its public policy on the subject of organization of workers for bargaining purposes. The pertinent part of this statute is set forth in the margin.[3] The meaning and effect of this declaration of policy is found in its application by the highest court of the state to the concrete facts of the instant case. Under the so-enunciated public policy of Washington, it is clear that workers shall be free to join or not to join a union, and that they shall be free from the coercion, interference, or restraint of employers of labor in the designation of their representatives for collective bargaining. Picketing of an employer to compel him to coerce his employees' choice of a bargaining representative in an attempt to induce a transgression of this policy and the State here restrained the advocates of such transgression from further action with like aim. To judge the wisdom of such policy is not for us; ours is but to determine whether a restraint of picketing in reliance on the policy is an

unwarranted encroachment upon rights protected from state abridgement by the Fourteenth Amendment."

As to Question No. 2, the jurisdictional question, we submit the following:

It is the contention of the Petitioners that Respondents-Plaintiffs are employees of Cover Girl of Miami, a firm engaged in interstate commerce within the meaning of the Taft-Hartley Act and that therefore the state Court did not have jurisdiction of the subject matter of the cause. They cite *Garner* v. *Teamsters Union* and *United Workers* v. *Laburnum Corp.*, Supra, as authority for their position.

Before proceeding further with this question we wish to respectfully call to the attention of this Court the following pertinent facts:

1. The record up to and including the date of the filing of the suggestion of lack of jurisdiction is silent as to whether the employer is interstate or intrastate commerce.

2. The Petitioners-Defendants submitted themselves to the jurisdiction of the trial court by filing an appearance, answer and attending the final hearing of the cause.

3. The suggestion of lack of jurisdiction on the part of the trial court was not filed until more than twenty (20) days after the entry and recording of the Final Decree.*

*The time for filing Petition for Rehearing in the State of Florida has been changed to ten days since the entry of the final decree in this cause. Florida Rules of Civil Procedure 1954.

Petitioners contend that the issue of lack of jurisdiction may be raised in Florida at any stage of the proceeding. We admit that under the law of Florida, and every other state in the Union, that the question of *total lack* of jurisdiction may be raised at any time for the reason that where a court lacks jurisdiction any order or decree entered by it is a nullity. However, in the instant case, the Circuit Court of Dade County, Florida had original jurisdiction of the subject matter of this suit, and where the court has general jurisdiction of the parties and the subject matter, and jurisdiction of particular cause is dependent upon the existence of particular facts, lack of jurisdiction may be waived. 21 C.J.S. 165-166, *U. S.* v. *Edwards* 23 F. 2d, 477; *U. S.* v. *Kiles* 70 F. 2d 880; *U. S.* v. *Ellison*, 74 F. 2d 864.

It may be readily observed that jurisdiction in the instant case depends upon the existence of a particular fact, that is, whether the Plaintiffs' were engaged in interstate commerce.*

Under the circumstances we seriously doubt that the Petitioners-Defendants had a right to question a lack of jurisdiction on the part of the trial court after the day they filed their appearance, but they certainly had no right to do so more than twenty days after the entry and recordation of the final decree in this cause. *Jappe* v. Heller, et al., 65 So. 2d 302 (1953), where the Supreme Court of Florida stated:

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*There is no suggestion or allegation anywhere in the record, including the motion of the Petitioners-Defendants to vacate the final decree, that the Respondents-Plaintiffs are now or ever were engaged in interstate commerce within the intent of the Taft-Hartley Act. Further, the only evidence that the employer may have been engaged in interstate commerce within the meaning of the Taft-Hartley Act is the alleged report of Dun & Bradstreet made in the motion to vacate long after the decree of the lower court had become final. It is doubtful if any one of the Respondents knows to this day whether he or his employer was engaged in interstate commerce at the time of or since the institution of this suit.

"Where petition for rehearing was not filed within twenty days of entry of decree in suit in equity Circuit Court had no jurisdiction to vacate the decree on rehearing."

The record in this case reveals that the final decree was entered on March 18, 1954, and recorded on the 19th day of March, 1954 (A. 82). Petitioners' motion to vacate final decree (which contains the suggestion of lack of jurisdiction) was filed on April 15, 1954, which was twenty-seven days after the entry and recordation of the final decree.

It would be of no help to Petitioners to resolve the question of jurisdiction in their favor for the simple reason that the actions of Petitioners were attended by violence, and under the cases relied upon by Petitioners it is crystal clear that State Courts have jurisdiction at all times to protect their citizens from the exercise of force and violence against them.

While it is true that no one was seriously injured, the fact remains that violence occurred. Counsel for Petitioners make "light" of these acts, but we answer their arguments on this score in the language of the learned trial Judge, made in the course of argument on the final hearing, when he observed:

> "Must there be bloodshed? If so, how much blood and of what variety; what count?" (A. 74)

We respectfully submit that the Petition for Certiorari should be denied.

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